

## **Minneapolis City Planning Department Report Zoning Code Text Amendment**

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**Initiator Of Amendment:** Council Member Paul Zerby

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**Intent Of The Ordinance:** 1) To allow existing fast food restaurants with drive through facilities to rebuild in PO Pedestrian Oriented Overlay Districts subject to certain conditions; and 2) to allow fast food restaurants in new storefront buildings where properties are in the C2 Zoning District and on a commercial corridor as defined by the City's comprehensive plan

**Affected Sections of the Zoning Code:** Title 20, Chapter 551, Article II, related to PO Pedestrian Oriented Overlay District; and Title 20, Chapter 548, Article III, related to C2 Neighborhood Corridor Commercial District

### **Background:**

A general look at how fast food restaurants are regulated in the City's zoning code was prompted by the desire of McDonalds Corporation to rebuild their restaurant at 15<sup>th</sup> Avenue SE and 4<sup>th</sup> Street SE in Dinkytown. The restaurant is considered a legally nonconforming use because it has a drive through facility and no drive-through facilities are permitted in the C1 Zoning District and the PO Overlay District. The addition of the drive through preceded the 1999 Zoning Code.

Two categories of zoning code regulations currently prevent McDonalds Corporation from rebuilding the restaurant at the current location. The first category relates to how nonconforming uses are handled under the zoning code. Because the drive through facility is nonconforming under the district and overlay district standards, McDonalds Corporation cannot under current zoning code provisions replace it. The second category relates to specific design requirements for fast food restaurants. Even though the existing fast food restaurant use is conforming under the current zoning code, under C1 and PO Overlay District standards a new fast food use restaurant cannot be located in a new building. It can be located only in a storefront building "existing on the effective date of this ordinance". A new restaurant building cannot be considered an "existing" storefront building.

Because of the zoning code restrictions described in the foregoing paragraph, the focus of staff analysis has been on drive through facilities as nonconforming uses, and on the restriction of fast food restaurants to existing storefront buildings. This report is focused on the first of these two issues. Proposed language for easing restrictions on fast food restaurants in the City's C2 zoning district is not addressed at this time.

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**Dinkytown McDonalds**

While the subject text amendments are to be considered as policy decisions relevant to fast food uses and drive through facilities in general, this section documents background relevant to the desire of McDonalds Corporation to rebuild its Dinkytown restaurant facility. If the first of the two draft text amendments is adopted, McDonalds Corporation would be able to bring application for a proposed new restaurant building. At that time, McDonalds Corporation would need to submit a set of development applications that would allow the Planning Commission and City Council to review the specific restaurant proposal under the development and design regulations of the Zoning Code. (Most but not all of the relevant development applications have already been received.)

The McDonalds restaurant building in Dinkytown was damaged during reconstruction of the adjacent bridge in May, 1997. Subsequent to this incident, the responsible governmental entities (including the City of Minneapolis) agreed to a monetary settlement with McDonalds Corporation to compensate for the property damage. The City of Minneapolis has no remaining formal or legal obligations towards McDonalds Corporation. The structural damage has not been fully repaired. McDonalds has indicated that it is possible to do so without replacement of the building.

According to the Dinkytown McDonalds business owner, the most important reasons for constructing a new building relate to improving the functionality of the drive through facility, reducing the awkwardness of a restaurant with seating on two levels, and updating the interior decor.

**Process background**

The review of zoning code provisions related to fast food restaurants was first initiated by Council Member Campbell on March 2, 2001. Through the summer and fall of 2001, McDonalds Corporation worked extensively with Planning Department design staff, responding to staff suggestions for improvements to the site design within the parameters given by the corporation. These included the expressed need for a largely one level restaurant and a greatly expanded drive through facility. The modified design strengthened the relationship between the restaurant building and the 4<sup>th</sup> Street pedestrian realm.

The first draft text amendment was forwarded to the Planning Commission in late 2001. It would have allowed the reconstruction of restaurants with drive through facilities only in the Dinkytown PO Overlay District. On December 11, 2001, the City Planning Commission continued consideration of the proposed text amendment, directing staff to a) inventory fast food establishments in all PO Overlay Districts, and b) identify a range of alternative approaches that could be taken to address the identified policy issue more generally rather than just for the Dinkytown PO Overlay District. Planning Commissioners expressed concern that a text amendment that related only to the Dinkytown PO District amounted to a single purpose amendment. They desired to address any identified policy issues related to fast food restaurants in a manner consistent with the extent of the issue.

On December 28, 2001, the City Council approved a Special Council Permit to allow the Dinkytown McDonalds restaurant to “construct a replacement McDonalds Restaurant with drive through at 407 15<sup>th</sup> Ave SE, according to the site plan submitted on October 11, 2001, pending final approval of site plan and conditional use plan by Planning Department, notwithstanding the Zoning

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Code.” Because of uncertainties regarding the meaning of “pending final approval of site plan and conditional use plan”, and discrepancies between the City Council approval language and the language of the special council permit application itself, staff determined that a zoning code text amendment was still required for McDonalds Corporation to re-build at its current location, and that any pertinent development applications are still required. The Special Council Permit was judged to allow McDonalds Corporation to proceed with development applications in parallel with the text amendment process—provided that development applications are not approved prior to the time of approval of the necessary zoning code text amendment.

On January 18, 2002, Council Member Zerby introduced the subject matter of a text amendment authorizing staff to consider modifications to the Zoning code in the PO Districts or Commercial Zoning Districts as necessary to remedy any identified issues with how fast food restaurants and drive through facilities are handled in the City’s Zoning Code. This direction effectively substitutes for the earlier March 2, 2001, direction to staff, broadening the sections of the Zoning Code that are subject to review. Because of this, the City Planning Commission on January 28, 2002, returned the predecessor March 2, 2001, text amendment request to its author.

**Public Comment**

Both the Dinkytown and the Marcy Holmes neighborhood organizations commented on the original proposed zoning code text amendment—that which would have affected only the Dinkytown PO District. The Dinkytown commercial area is in the Marcy Holmes neighborhood. The Marcy Holmes Neighborhood Association reviewed both the proposed text amendment and restaurant design. Their feedback on the design of the proposed restaurant will be relevant when and if modification to the zoning code allows the restaurant to make application for development approvals. They have submitted a letter supporting an amendment to the zoning code that would allow the reconstruction of the restaurant building.

The Prospect Park East River Road Improvement Association (PPERRIA) submitted a letter opposing the proposed text amendment, arguing that it would not be consistent with the purpose of the Pedestrian Oriented Overlay District.

**Existing zoning code provisions related to fast food restaurants and drive through facilities**

The table below provides an overview of zoning code provisions related to fast food restaurants and drive through facilities.

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|                          | C1                          | C2                           | C3A                         | C3S                        | C4                         | I1                           | PO Overlay    |
|--------------------------|-----------------------------|------------------------------|-----------------------------|----------------------------|----------------------------|------------------------------|---------------|
| Fast Food Restaurant     | Allowed as conditional use* | Allowed as conditional use** | Allowed as conditional use* | Allowed as conditional use | Allowed as conditional use | Allowed as conditional use** | Allowed*      |
| Drive Through Facilities | Not Permitted               | Permitted                    | Not Permitted               | Permitted                  | Permitted                  | Not Permitted                | Not Permitted |

\*Only in existing storefront buildings.

\*\*Allowed only in existing storefront buildings  
“except where the property is part of an area of at least 660 feet of continuous C2, C3S, C4 or industrial zoning . . . “

While fast food restaurants are allowed as conditional uses in all of the City’s commercial zoning districts, in much of the City they are only allowed in storefront buildings that were constructed before the zoning code was adopted in 1999.

**PO Pedestrian Oriented Overlay District Text Amendment**

**Purpose For The Amendment:**

- What is the reason for the amendment?**
- What problem is the Amendment designed to solve?**
- What public purpose will be served by the amendment?**
- What problems might the amendment create?**

**Public Purpose**

Drive through facilities are prohibited in the City’s PO Pedestrian Oriented Overlay Districts. This restriction conforms with the purpose of the PO District because drive through facilities attract automobile traffic, negatively impacting the pedestrian realm that the PO Overlay District is designed to support.

Given this, it may seem somewhat paradoxical to allow fast food restaurants with drive through facilities to rebuild in the City’s PO Overlay Districts. The basis for proposing this is that more can potentially be gained than would be sacrificed. Fast food restaurants with drive-throughs in the PO Districts are generally unsupportive of the pedestrian environment in multiple ways. Six instances of fast food restaurants in PO Overlay Districts have been identified by staff. (See table and graphic attached.) Of these, only two are optimally located along the street frontage. The proposed text amendment would allow fast food restaurants with drive through facilities to rebuild, but requires that the new building be a “storefront building”. This is defined by the zoning code as a “mixed use or multiple story building . . . [fronting] within five feet of a front lot line or public sidewalk, and where each ground floor use includes a separate principal customer entrance facing the street.” The proposed amendment also prohibits freestanding signs. Moreover, a new restaurant facility would be subject to the requirements of the site plan review ordinance. In short, allowing the rebuilding of

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these restaurants would be expected to result in development that is of higher quality and more friendly to the pedestrian environment. A fast food restaurant is not likely to voluntarily improve these characteristics if it must give up a drive through facility in exchange.

**Potential Concerns**

Provisions of overlay districts are subject to variance. Therefore, one risk of adopting the proposed text amendment is that a PO Overlay District restaurant facility could rebuild, replacing its drive through facility—but by obtaining a variance not to meet the storefront building condition. Having said this, a variance can be conferred for reasons that are entirely legitimate if the variance is supported by unique characteristics of the site that make storefront development extraordinarily difficult and the intent of the code to address the pedestrian realm is met in other ways.

The text amendment allows the reconstruction of a restaurant/drive-through by conferring on currently nonconforming fast food restaurants with drive through facilities “all of the rights of a conforming use.” This device would be unique in the City’s code. Making these facilities essentially conforming may be of concern in principal. There may also be concern that the precedent may open the door to its extension to other nonconforming uses. Staff feel that the policy basis for doing this is clear enough that the device would not need to be extended to other uses unless it were felt to be warranted by the City Council.

**Timeliness:**

**Is the amendment timely?**

**Is the amendment consistent with practices in surrounding areas?**

**Are there consequences in denying this amendment?**

The proposed amendment is timely because it is a prerequisite to the existing McDonalds restaurant in Dinkytown submitting development proposals for building a new restaurant on its property. The owner of this McDonalds restaurant would like to have building permits in hand by the time the University of Minnesota breaks for summer.

All neighboring Cities surveyed have restrictions on the location of drive through facilities. The Cities of Richfield and Saint Louis Park emphasize drive through facilities in their regulations rather than the category of restaurant. In Saint Louis Park, fast food restaurants are not distinguished from other types of restaurants, but those that have drive through facilities would be identified as “in-vehicle sales and services”, a distinct use category. In-vehicle sales and services is permitted in all commercial zoning districts, but it is not permitted within a certain distance of residential property, and it is subject to certain development standards. In Richfield, Class III (fast food) restaurants are allowed in all commercial districts, but their size is restricted in the C1 neighborhood commercial districts. A buffer of 30 feet is required from any residential use, and any drive through speaker must be at least 100 feet from residential property.

Saint Paul uses a similar regulatory structure to Minneapolis with regard to fast food restaurants, but is less restrictive in several ways. It defines fast food restaurants as a distinct use, using a similar definition to that of Minneapolis. It allows fast food restaurants in its B2 community business zoning district (roughly equivalent to our C1 district) only if incorporated in a multi-use retail center and there is no drive through facility. It does not, however, require that they be located in existing

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buildings. Fast food restaurants with drive through windows are first permitted in St. Paul's B3 zoning district (roughly equivalent to our C2 zoning district). They do not require their location in storefront buildings, or existing buildings, as Minneapolis does in much of the C2 zoning district.

**Comprehensive Plan:**

**How will this amendment implement the Comprehensive Plan?**

Most of the City's PO districts are designated Activity Centers in The Minneapolis Plan. Minneapolis Plan policies are highly compatible with the purpose of the PO Overlay District in that they are strongly supportive of the pedestrian environment, particularly in activity centers.

Activity Centers are defined as: "destinations that attract large numbers of visitors, workers and residents. They support a wide range of commercial, office-residential and residential uses, a busy streetlife and levels of activity throughout the day and into the evening. They are heavily oriented towards pedestrians, and maintain a traditional urban form and scale. While many commercial uses are permitted in these areas, it is important to note that some commercial uses on these streets will be evaluated on the basis of negative impacts the use generates relative to the location and its surroundings."

Minneapolis Plan policies related to activity centers:

- 4.7 Minneapolis will identify and support Activity Centers by preserving the mix and intensity of land uses and enhancing the design features of each area that give it a unique and urban character.

**Implementation Steps:**

- Preserve traditional urban form in buildings where it currently exists, and encourage new development to relate to traditional siting and massing, where it is already established.
- Discourage automobile services and drive-through facilities from locating in these designated areas.
- Require that buildings in Activity Center districts incorporate a pedestrian orientation at the street edge.

Other TMP policies relate more generally to commercial redevelopment:

- 9.10 Minneapolis will support efforts that recognize both the increased visibility and importance of corner properties and the role of gateways in enhancing traditional neighborhood character.
- 9.11 Minneapolis will support urban design standards that emphasize a traditional urban form in commercial areas.

To the extent that allowing fast food restaurants to rebuild fosters an improved conformance to these urban design policies, the proposed text amendment would contribute to the implementation

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of the comprehensive plan. To the extent that the proposed text amendment does not “discourage drive-through facilities”, it does not contribute to the implementation of the plan.

**Recommendation Of The City Planning Department:**

The City Planning Department recommends that the City Planning Commission and City Council adopt the above findings and approve the proposed text amendment.